

**SIKKIM**  
  
**GOVERNMENT**                                   **GAZETTE**  
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**GOVERNMENT OF SIKKIM  
DEPARTMENT OF INFORMATION TECHNOLOGY**

No: 724/223/DIT/17

Dated: 23.08.2017

**RIGHT OF WAY POLICY (Amendment)**

Whereas, the State Government has framed the Right of way Policy, which was notified vide notification number 467/820/DIT/11 dated: 21.05.2011, published in extraordinary Gazette number 274 dated 25<sup>th</sup> May 2011;

And whereas, the Right of Way Policy,hereinafter referred to as 'ROW' grants permission to the telecom service providers in the State like BSNL, Reliance, Vodafone etc. for laying the telecom cables either underground or on overhead infrastructure;

And whereas, with the rapid growth in telecomm sector in Sikkim, there arises a need to incorporate a more robust guidelines in the existing Right of Way policy which would streamline the process for granting ROW permissions in a time bound manner;

And whereas, the State Government has been making several efforts to promote Information Technology in the state with the objectives of improving the state of economy, enhancing the quality of life of citizens, providing good governance and ensuring development with equity. Some of these efforts are attracting investments in Information Technology sector, implementation of electronic governance projects and promoting Information Technology education. Besides the ongoing efforts the government is committed to provide Optical Fibre Cable,hereinafter referred to as 'OFC' connectivity to ensure the availability of high speed broadband;

And whereas, the State Information Technology Policy stresses the need of availability of a robust telecommunication infrastructure with adequate bandwidth across the length and breadth of the state. The globally accepted method of creating broad band networks is through laying optical fibre as backbone. In Sikkim, the optical fibre is to be laid along roads like the National Highways, State Highways and other road networks belonging to the Roads and Bridges Department, Rural Management Development Department (RMDD), Urban Development

and Housing Department, Forest Department, Border Road Organization and also of that of the Army;

And whereas, in the absence of general guidelines, proposals for laying telecom cables get delayed. Keeping this in view, the State Government has decided to frame a policy and to issue guidelines for issuing permissions to the Service Providers desirous of laying OFC in the State. This policy covers only laying of communication infrastructure in the State of Sikkim on the land belonging to any agency, including National Highways.

Now therefore, with the view to achieve the above objectives, the State Government in supersession of notification No: 467/820/DIT/11 dated 21/05/2011, is hereby pleased to notify the Right of Way (ROW) Policy as under:

#### **1. Commencement And Validity**

- (1) This policy shall come into force on the date of its publication in the Official Gazette.
- (2) The policy shall be valid for a period of 18 (eighteen) months from the date of acceptance of Application.

#### **2. Definitions**

In this policy unless the context otherwise requires,

- (a) "Agency" means and includes to Department/organization/company in-charge of the road.
- (b) "Appropriate authority" means Head of the concerned department.
- (c) "Licensee" means service providers availing the ROW for laying telecom cables.

#### **3. Re-application after 18 months**

- (1) Licensee shall report on the status of work completed after 18 (eighteen) months from the date of issue of application.
- (2) The Department of Information Technology shall make a decision based on the work which has been completed. This will be extended after receiving proper justification on what percent of work could not be completed within this tenure.

#### **4. Application by a licensee**

- (1) The ROW Policy will be applicable for all roads owned and managed by State Government, Local Bodies, Public Sector Undertakings and Border Road Organization in the State. Permission for ROW will be granted by the State Government through the Pr. Secretary, Department of Information Technology (DIT), as per guidelines and design parameters laid down by the office of Chief Engineers with respect to roads owned and managed by concerned Department. With respect to roads owned by other Departments of the Government, Local Bodies, Public Sector Undertakings etc. the appropriate authority for granting permission will be designated by them. However, in case of National Highway lands permission of ROW will be granted by Ministry of Road Transport and Highways (MORTH) or its designated authority. The Department of Information Technology, Government of Sikkim, shall be the nodal office and all such

applications for ROW shall be routed through the Pr. Secretary, DIT who would then forward it to the concerned department. The agency availing the ROW shall submit the completion report to Pr. Secretary, DIT so that updated information of the OFC Network in the state can be maintained. The ROW shall be issued to the agencies after they have obtained the necessary clearances from the respective Roads and Bridges Department/Rural Management and Development Department /Energy and Power Department/Urban Development & Housing Department and the Agency in charge of the road.

- (2). If the alignment of any OFC line passes through a forest land then forest clearance is required to be accorded under the Forest (Conversation) Act, 1980 after completing the formalities prescribed under the Act. In this case the ROW is allowed to the licensee by the Forest, Environment and Wildlife Management Department, the status of the diverted land continues to be forest land even after it is put to non-forest use.
- (3). A licensee shall, for the purposes of establishment of OFC connectivity under or upon any immoveable property vested in or under the control or management of any appropriate authority, make an application, supported by such documents, to that authority in such form and manner as may be specified by that appropriate authority.
- (4). The information along with supporting documents to be provided by the licensee in the application made under clause (3) shall include:-
  - (a) A copy of the license granted by the Central/State Government.
  - (b) The details of the OFC infrastructure proposed to be laid.
  - (c) The mode of and the time duration for, execution of the work.
  - (d) The time of the day and when the work is expected to be done in case the licensee expects the work to be done during specific time of the day.
  - (e) The details of expenses, estimated on the basis of the applicable schedule of rates adopted by the appropriate authority, that such appropriate authority will necessarily be put in consequence of the work proposed to be undertaken by the licensee.
  - (f) The inconvenience that is likely to be caused to the public and the specific measures proposed to be taken to mitigate such inconvenience.
  - (g) The specific measures proposed to be taken to ensure public safety during execution of the work.
  - (h) The names and contact details of the employees of the licensee for purposes of communication in regard to the application made.
  - (i) Any other matter relevant, in the opinion of the licensee, connected with or relevant to the work proposed to be undertaken.

(5). Every application made under clause (3) shall be accompanied with such fee to meet the administrative expenses for examination of the application and the proposed work as the Principal Secretary, Department of Information Technology may , by general order, deem fit - The onetime fee to meet administrative expenses, accompanying every application shall not exceed Rs.50,000.00 (Fifty Thousand only).

(6). A performance bank guarantee @ Rs 75.00 per route meter with a validity of one year initially (extendable if required till satisfactory completion of work) shall be furnished by each licensee as a security against improper filling/unsatisfactory compaction/restoration and damages caused to other underground installations/utility services and interference, interruption, replacement, disruption or failure caused thereof to any services. Notwithstanding this licensee shall be liable to pay full compensation to the aggrieved owners for any damage sustained by them by reasons of the exercise of ROW facility. The Roads and Bridges Department/Rural Management and Development Department/ Urban Development & Housing Department, State Government or the Agency shall not be accountable or liable in any manner whatsoever and the licensee shall be solely responsible for above discrepancies. The above charge of Rs. 75.00 per route meter is liable to be reviewed every three years. The bank guarantee will lie in the custody of Pr. Secretary, DIT who will release it only after receipt of completion report and clearance from the concerned agency in charge of the road;

Provided that no fee, charges, lease, rental, license fee or any other such charge in cash or kind shall be levied by the appropriate authority on the licensee for execution of the work.

(7). If the licensee has failed to complete the work satisfactorily during the prescribed tenure and no proper justification on the same could be provided, the DIT will impose a penalty of 2% against the furnished performance bank guarantee in the form of Earnest Money Deposit (EMD).

(8). Provided that no application shall be rejected unless the applicant licensee has been given an opportunity of being heard on the reason for such rejection.

##### **5. Grant of Permission**

- 1) Any service provider that has been registered with the Department of Telecommunication shall be eligible to avail the ROW facility/permission. However, enforceability for the permission so granted shall be restricted to the extent of provision/scope of service contained/defined for the license so granted by the Department of Telecommunication for the telecommunication infrastructure.
- 2) Roads and Bridges Department/Rural Management and Development Department / Energy and Power Department/Urban Development & Housing Department and the Agency in-charge of the road will provide broad guidelines for various options depending upon topography and site conditions for availing of ROW.

- 3) A joint survey will be conducted with representatives of the Department of Forest, Road and Bridge Department/Rural management and Development Department/Energy and Power Department /Urban Development and Housing Department and Agency owning the road the licensee prior to commencement of work to undertake a feasibility of work to be carried out.
- 4) The guidelines pertaining to Electromagnetic Fields (EMF) issued by the Department of Telecommunications, Government of India shall be strictly adhered to by the licensee/service provider for location of the above ground contrivances proposed to be used for transmission of radio waves or electromagnetic waves which may cause the health hazard.
- 5) The licensee shall be solely responsible for full compensation/indegnification of concerned Agency/agrieved owners for any direct, indirect or consequential damage caused to them/claim or replacements sought for. The concerned agency in coordination with owner shall also have the right to make good such damages/recover the claims at cost and the risk of the licensee.
- 6) No licensee shall claim exclusive right on the ROW and any subsequent user will be permitted to use the ROW, either above or below, or by the side of the utilities laid by first user, subject to technical requirements being fulfilled which shall be decided by the Roads and Bridges Department/Rural Management and Development Department/ Urban Development & Housing Department or Agency in charge of the road.
- 7) The permission granted shall not in any way be deemed to confer to the licensee/ service provider any ownership right or any interest in route/highway land/property.
- 8) The licensee shall be responsible for ascertaining from the respective agency in coordination with owner, regarding the location with other cables, underground installation/utilities/facilities etc. before commencement of the work.
- 9) The licensee will submit a list of roads proposed for laying OFCs to the local bodies. The Commissioner of the local body (for urban bodies) concerned will examine the list, and if for any reason considers that any specific road is to be deleted from the list, the applicant will lay the OFC in the alternative road suggested.
- 10) The licensee shall make his own arrangements for crossing drain, culverts, bridges, jhora, river etc. at their own cost. If due to unavoidable reasons the road needs to be cut for crossing or laying of OFC the licensee shall deposit the restoration cost/ reinstatement charges as assessed by the government in coordination with the concerned agency.
- 11) In case of up gradation of the road or extension of road carriage width, the cables/ ducts or any other structures laid by the licensee shall be shifted and re-laid by the licensee at their own cost and within specified period indicated by the Roads and Bridges Department/Rural Management and Development Department or the agency in-charge of the road.

- 12) Where the appropriate authority having regard to circumstances which have arisen since the establishment of any underground or over ground infrastructure or upon any immoveable property vested in or under the control or management of that appropriate authority that it is necessary and expedient to remove or alter such infrastructure it shall issue a notice to the licensee being the owner of such infrastructure to remove or alter its location.
- 13) Shifting of existing facilities like telephone cables, electrical lines, electrical poles etc. wherever required would be done in a time bound manner and at their own cost. The service provider will ensure that there is no hindrance to the free flow of traffic.
- 14) Restoration/reinstatement of the road damaged due to digging and other activities while laying cables/ducts or construction of structures while availing the ROW will be done by the Service Provider to the satisfactory level of the land/road owner department.
- 15) The applicants are required to give 6 months guarantee for the restoration work done by them. If any damage is caused to the road so restored, the applicants should carry out the work again at their cost to the satisfaction of the local bodies.
- 16) The Roads and Bridges Department/Rural Management and Development Department/ Urban Development & Housing Department/ Agency in-charge of the road will grant permission based on topography and site specific conditions within 15 (fifteen) days along with map after receipt of application and deposit of restoration/reinstatement charges.
- 17) As per the site conditions if private land has to be utilized or private structures are to be utilized, the licensee/service provider will be required to meet the cost of land acquisition/rentals etc. as the case may be.
- 18) In case of overhead cables/ducts to be placed from point to point connection, usage of high tension poles can be accessed once the clearance for the same has been undertaken from the Energy and the Power Department. The Secretary, Energy and the Power Department will be the nodal authority to take any such decision. The Department of Energy & Power will allow the use of spare cores available under Rental/lease basis to the companies desirous of expanding the data service area.
- 19) There will be a provision of reinforced ducts in all important new roads being constructed in Sikkim. This duct will be used for laying communication cables by the various service providers. The agency in charge of the roads will be authorized to levy yearly rental or onetime payment as charges on mutually agreeable terms and conditions.

## **6. Safety Measures**

- (1). Assessment of measures to ensure public safety and inconvenience that the public is likely to be put to in consequences of the work proposed and the measures to mitigate such inconvenience is indicated by licensee.
- (2). Prior to the commencement of work of laying the underground/over ground infrastructure during the execution of work, the measures to mitigate public inconvenience and providing for public safety are strictly followed by the licensee.
- (3). The licensee should give prior information to the relevant Traffic and Transport department officials while undertaking the OFC laying work on roads to enable diversion or regulation of traffic. During the progress of work, the Police Department (Traffic) shall be consulted on a daily basis. Even before the work is started, 'Caution-cum-information' boards shall be positioned by the licensee on both ends of the road.
- (4). In case of all excavations to a depth of more than 1.5 meters, the holes shall be covered appropriately on both sides to avoid soil erosion. Manholes shall be covered on all the four sides using corrugated sheets or equivalent product. These sheets shall be painted in red colour.
- (5). The licensee/ service provider shall ensure that the debris/waste material if any shall be disposed by them at their own cost failing which the owner of the road will do so at the cost of the licensee. The digging of the trenches would be strictly regulated so that cables are laid and trenches are filled up before the close of the work every day. Filling should be completed to the satisfaction of the line Department. While carrying out digging work, necessary caution like barricading, traffic diversion signs, danger lighting etc. shall be provided by the user.

## **7. Other consideration**

- (1). The DIT or State Government should be allowed to use the Mobile Base Transceiver Stations (BTS) towers along with Power of Service Providers for setting up a communication equipment for establishing their own captive telecommunication links if required free of cost.
- (2). The service provider shall provide a dedicated 8mbps leased line to the DIT with internet at Gangtok and a 8mbps leased line to each of the District Administrative Centre's (DACs) at the three outlying districts HQs (Gyalshing, Namchi and Mangan) from the State Data Centre located at Gangtok. This facility will be made available to the State Government till the date the service provider has operations in Sikkim.

## **8. Settlement of dispute arbitration etc.**

- (1). In case of any dispute arising between the parties to the agreement under this policy the parties shall take all possible steps to settle the matter amicably.

(2). In case the parties fail to settle the dispute amicably, the matter shall be referred to the Arbitrator under the Arbitration and Conciliation Act, 1996. An officer at the level of any first class officer to be nominated by the Government of Sikkim and another one to be nominated by the Applicant will act as Arbitrators to whom the matter will be referred to and the decision of the Arbitrators will be final and binding on both the parties.

**9. Termination**

In case of breach of any of the clauses of the agreement, the Government will be empowered to terminate the contract after giving a notice of 1(one) month.

**By order and in the name of the Governor.**

**Govind Mohan, IAS  
Principal Secretary  
Department of Information Technology**